IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 768 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

STATE BANK OF INDIA

Versus

CHHABRA FASTENERS PVT.LTD.

Appearance:

MR PRANAV G DESAI for Petitioner
MR BHUSHAN B OZA for Respondent No. 1
MR CH VORA for Respondent No. 3
SERVED BY RPAD - (N) for Respondent No. 5

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 27/04/2000

ORAL JUDGEMENT

(Per H.R. Shelat, J.)

This appeal is directed against the judgement and decree dated 8.5.1981, passed by the then learned Civil Judge (Senior Division), Kuchchh at Bhuj, in Special Civil Suit No.20 of 1979 on his file, partly decreeing the suit, directing the respondent (original defendants) to pay Rs.1,35,998.96 with running interest at the rate of 8% per annum from the date of the suit till realisation and further direting to pay the amount of Rs.2,39,579.96 with running interest at the rate of 14% per annum from the date of the suit till realisation with proportionate costs, with facilitation to pay the amount by half-yearly installment each of Rs.25,000/- commencing from 30.11.1981 making it clear that in case of two defaults the appellants would be entitled to recover the remaining amount at a time.

2. Necessary facts may in brief be stated as under. The appellant is having its branch at KFTZ (Kandla Free Trade Zone). The respondent no.1 is a limited company registered under the Companies Act and having its branch officce and factory in KFTZ, Gandhidham. The respondent no.2 is the Managing Director of the company and the respondents nos.3 to 5 are the Direcctors of the company. The Respondent no.1 approached the appellant for a loan of Rs.3,15,000/= on Cash Credit Basis pledging the goods. The same was granted. The Respondents nos.2 to 5 executed numbers of documents including the promissory note and an agreement in favour of the appellant. The Respondents nos.2 to 5 also stood as sureties for the respondent no.1 and they also executed the letter of guarantee on 3.4.1976. As per the agreement, the respondent did not make the payment and therefore Rs.53,907.12 p.s. remained due inclusive of interest and other charges. The appellant demanded its dues by writing several letters and ultimately including notice of the demand dated 27.11.1978, but the respondent made no payment. On the contrary, they admitted the claim and requested the appellant to grant installments and reduction in the rate of interest. Thereafter also as no payment was made, the appellant was constrained to prefer the suit being Special Civil Suit NO.20 of 1979 in the Court of the Civil Judge (S.D), Kuchchh at Bhuj.

3. The respondents who are the original defendants resisted the suit by filing written statement exh.43. According to them, the plaintiff had granted two loans one of Rs.1,00,000/= against the machinery and another of Rs.3,50,000/- as cash credit loan charging interest at

the rate of 11% and 14% respectively. The bank was charging the interest more than 11% and 14% and had also charged compound interest which was not at all consistent with the agreement entered into. During the pendency of the suit respondent had already paid Rs.1,56,276.89 ps and therefore only Rs.2,93,721.11 ps remained due. The amount of interest claimed by the plaintiff were not just and legal. The business of the company remained closed for a long time and it was not possible to pay the amount if the decree was passed directing to pay at a time. The respondent therefore prayed for installments.

4. The learned Judge framing the issues at Ex.80 recorded the evidence. He appreciating the evidence before him passed the decree as aforesaid. It is against that judgement and decree the present appeal is filed by the bank - the original plaintiff.

5. The judgement and decree passed by the learned Judge are assailed only on two grounds : (i) rate of interest from the date of the suit, and (ii) grant of installments. We would therfore confine to these two points and would not dwell upon other points though learned advocate made an attempt to argue cursorily.

6. According to the learned advocate representing the appellant as per the term of the agreement the interest was to be charged at the rate of 14% minimum but the same was made payable on monthly rests. The learned judge therefore ought to have awarded the future interest as per such term of the agreement. It is also the contention that as per the term 11(g) of the agreement (exh.85) the interest at the rate of 18% when agreed upon ought to have been granted by the learned Judge. He then in support of such contention relied upon two decisions rendered by this Court in the cases of Central Bank of India v. M/s P.R. Garments Industries Private Limited 26 (2) GLR 919 and Union Bank of India v. Narendra Plastics 31(2) GLR 1283 wherein it is laid down that in respect of commercial transactions the Court should award interest at the contractual rate or the bank rate.

7. Against such submission, it is the contention of Mr S. M. Shah and Mr C.H. Vora, the learned advocate representing the other side that the learned Judge was perfectly right in passing the decree qua interest. Whatever the rate of interest was agreed upon, the same has been awarded and there is in fact no just and valid cause to challenge the decree.

8 It may be stated that from the date of the suit

till realisation what should be the rate of interest if decree is passed, is the point raised for our consideration. For the same relevant provision is Section 34 of the Civil Procedure Code. Here the loans were granted to respondent no.1 - company for its business. It was therefore a commercial transaction and therefore the proviso to Section 34 of CPC will come into play. As per that proviso the rate of interest that can be granted may exceed 6% per annum but cannot excceed the contractual rate of interest or where there is no contractual rate, the rate at which the loans are advanced by Nationalised Banks in relation to commercial transactions. As per the provision a discretionary power is vested in the Court. The Court has to exercise the discretion judicially and not arbitrarily or perversely and considering the facts and circumstances on record it is free to prefer a particular rate of interest which must be ranging between the minimum and the maximum prescribed namely 6% per annum which can be the minimum and the contractual rate of interest or the rate of interest at which the loans are granted by the nationalised bank which can be the maximum. In view of this provision, we have to see whether the learned judge has made any mistake in overlooking this provision and awarding the particular rate of interest.

9. As per term no.4 of the agreement (exh.85) the rate agreed upon is 14% per annum, and as per the term no.11(g) 18% interest is agreed upon, but it is in the case where irregularity in drawing the amounts in exccess of the limits granted is found. In the case on hand, it is not the case of the bank that the respondents showed any irregularity by withdrawing amount in excess or in excess of the drawing power. Consequently the case regarding the interest to be charged at the rate of 18% would not come into play. As per clause 4 of the agreement minimum rate of interest being 14%, the same has been awarded by the learned Judge so far as second loan of Rs.3,50,000/- is concerned. This aspect, therefore, requires no consideration.

10 With regard to first loan of Rs.1,00,000/- the learned judge has awarded the interest at the rate of 8% per annum. Regarding that, the agreement in question is not produced on record. We are, therefore, left to appreciate the oral evidence. Mr Gopinathan Menon who figured on behalf of the appellant at exh.83 has made it clear in his evidence that for the loan of Rs.1 lakh the interest was charged at the rate of 8% per annum. He does not say that the interest was to be charged every month at monthly rests. When the officer of the bank has

in the absence of any documentary or other evidence made it clear that the interest at the rate of 8% interest was being charged, the same has been rightly accepted by the learned Judge and granted the interest on that loan while passing the decree. From such facts it is clear that the learned judge was aware of the proviso to Section 34 of the CPC and awarded that rate of interest which was the contractual rate and has not reduced the rate of interest though it was within his competence to reduce it up to 6% considering the facts and circumstances on record.

11. However, it is emphatically submitted on behalf of the appellant that in the case on hand 18% interest ought to have been granted keeping in mind clause 11(g) of the agreement. As stated above, that clause does not come into play because there is no irregularity in drawing the amount beyond the limits granted or the authority granted. But, even if for the sake of argument accepting the facts canvassed by the appellant are accepted in our view the same does not find a ground to stand upon. At the cost of repetition, we may say that the Court is vested with the discretionary power and grant the interest at the rate of 6% or more but not beyond the contractual rate or in the absence thereof the rate at which the nationalised bank advances the loan. When Court is vested with the discretion the Court has to exercise the discretion judiciously and decide what would be the just and fair rate of interest. In the above stated two decisions of this Court, no doubt, keeping the Section 34 of CPC in mind in repsect of the commercial loans the decree should award the interest at the contractual rate or at the bank rate. However, it is also made clear that ordinarily such rate must be granted but there is a scope to depart from such principles which may be rare and that may be in the cases where the Court finds that to grant the rate of interest agreed upon would be usurious, excessive or unreasonable.

12 Whether in the case on hand there is any justification to reduce the rate from 18% to 14% or 8% is the point that now requires to be examined. Surendrasinh Balwantsinh Chavda, respondent no.5, has deposed at exh.107. He has stated about the difficulties the respondent no.1 was facing in making the payment of loan back. He has also made it clear that representation by writing letters was made for reduction in the rate of interest. Those two letters are produced at exh.104 and 105. The letter at exh.104 is dated 3.12.1978 and the letter at exh.105 is dated 18.12.1978. What transpires from both the letters is that a parley was arranged and

on behalf of the respondent no.1 attempt to impress upon the authority of the appellant was made for getting the rate of interest reduced on the ground that two of the Directors had tendered the resignations and there was also confiscation order passed by the custom authority, as a result, it was not possible for the company to export the production. It was also made clear that the company could not produce the goods in time and satisfy the orders it received by exporting the goods, as a result, the company had to sustain heavy financial loss. The company had to sell out certain machineries. The company also putforth a proposal to shift the other machineries from KPTZ to elsewhere, namely, Nashik so that it could run the company well and come up to the expectation. By such representation it was brought to the notice of the bank-authority what sort of difficulties the company was experiencing and how badly it was passing through the lean years. In any case, it is sought to be impressed that the company's financial condition was not that much sound so as to pay the interest demanded in the notice and the suit. Considering the genuine difficulties and hardships faced by the company when the learned judge has preferred to award the aforesaid rate of interest, we do not find any reason to interfere with the same holding that the discretionary power is not exercised justly or propertly, but capriciously.

13 Faced with such situation, Mr Desai the learned advocate representing the applicant-Bank submits that placing reliance on clause no.7 in the agreement (exh.88) interest with monthly rests ought to have been granted meaning thereby that the claim of the Bank adding every month the amount of interest accrued due on the balance and then posting the debit entry drawing the total thereof as the principal amount for charging interest thereon for the next month ought to have been accepted. In short, running interest every month ought to have been accepted and decree ought to have been passed accordingly. It may be mentioned that no such prayer is made in the plaint and so the contention must fail. But even if that aspect is ignored, the contention cannot find favour.

14 The Court is vested with the discretion and for the reasons stated hereinabove the discretion is judiciously exercised having regards to the above referred facts and circumstances on record. In view of the matter we see no reason to accept the contention advanced on behalf of the appellant qua the rate of

interest. We will now switch over to the next contention regarding the installments.

15 It is the submission on behalf of the appellant that installments ought not to have been granted and the appellant ought to have been made authorised to execute the decree so as to realise the amount at a time. It may be mentioned that in view of Order 11 Rule 20, CPC the Court is vested with the discretionary power to grant installments while passing the decree notwithstanding any thing contained in the contract under which the money is payable. The Court is free to grant installments for any sufficient reason which are required to be incorporated in the judgement. In the case on hand, the learned Judge has considered the above referred circumstances and facts and thought it wise to grant installments so that the company passing through the lean years can manage for the amount conveniently and may pay to the bank and the bank dealing with public money may not have to incur heavy expenses for execution or even loss for being helpless if the company is not in a position to make the payment and execution through rigorous measures is impossible or is found difficult. When accordingly, the learned judge has exercised the discretion, we see no reason to interfere with the same. It may, however, be mentioned that by now more than two defaults have already been committed and therefore it would be open to the bank to realise the decretal amount subject to the applicable provisions of law. The contention therefore fails. On no other grounds the decree passed by the lower court is assailed.

16 For the aforesaid reasons we see no justifiable reason to interfere with the decree and the judgement passed. The same being just and proper are required to be maintained. The appeal is therefore liable to be dismissed, and is hereby accordingly dismissed with no order as to costs.

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